A

EDWARD POH CHANG SUI v. HALIZAE HUSSIEN

HIGH COURT SABAH & SARAWAK, LABUAN
RAVINTHRAN PARAMAGURU J
[CIVIL CASE NO: LBN-22-13-7-2012]
25 MARCH 2014

B

CONTRACT: *Clubs – Rights and liabilities of members – Member of club instituted legal proceedings against club – Suspension of member from club – Whether club's constitution prevented its members from seeking justice in court – Whether suspension breached art. 8 Federal Constitution and s. 29 Contracts Act 1950 – Whether constitution of club contravened s. 29 – Whether indefinite suspension of member unlawful*

C

CONTRACT: *Agreement – Agreements in restraint of legal proceedings – Member of club instituted legal proceedings against club – Suspension of member from club – Whether club's constitution prevented its members from seeking justice in court – Whether suspension breached art. 8 Federal Constitution and s. 29 Contracts Act 1950 – Whether constitution of club contravened s. 29 – Whether indefinite suspension of member unlawful*

D

TORT: *Defamation – Pleadings – Compliance with O. 78 Rules of Court 2012 – Failure of – Whether words which were deemed defamatory produced in statement of claim – Whether claim for defamation allowed – Lim Kit Siang v. Datuk Dr Ling Liong Sik & Ors*

E

UNINCORPORATED ASSOCIATIONS: *Clubs – Disciplinary proceedings – Plaintiff uttered vulgar and derogatory remarks against captain of club – Letter of complaint issued by captain – Failure to furnish letter of complaint to plaintiff – Whether defendant breached principle of natural justice – Whether questionnaire provided to plaintiff contained allegations raised in letter – Whether plaintiff had fair notice of charge and was given reasonable opportunity of being heard – Whether plaintiff's suspension without merit*

F

G

The plaintiff was a member of the Kelab Golf Labuan ('the club') and the defendant was the secretary of the club. She was sued in her capacity as the public officer of the club under s. 9(c) of the Societies Act 1966. The facts revealed that the plaintiff sought redress *via* this suit for his suspension from the club on two occasions. In the first occasion, the plaintiff was alleged to have uttered vulgar and derogatory remarks against the captain of the club. The captain then issued a complaint letter against the plaintiff to the club. Before the disciplinary committee, the plaintiff was given a questionnaire which contained the crucial allegations of the club captain. However, the plaintiff alleged that he was deprived of natural justice when he was not furnished with the letter of complaint from the club captain and as such, he was not able to prepare his defence. As a result, the plaintiff did not answer the questions put to him in the questionnaire. The plaintiff was suspended from the club for a period of one month for misbehaviour within the

H

I

meaning of s. 11(2) of the constitution of the club ('the first suspension'). The plaintiff also contended that the suspension notice was published on the notice board of the club and this damaged his reputation which caused him to suffer anxiety, distress and embarrassment. The plaintiff initially sued the club in the Sessions Court but thereafter discontinued the suit. However, the club suspended him again for suing the club ('the second suspension'). The plaintiff argued that his suspension had breached art. 8 of the Federal Constitution and s. 29 of the Contracts Act 1950 ('CA50'). He contended that the constitution of the club prevented him from seeking justice in the courts. In relation to the first suspension, the defendant argued, *inter alia*, that (i) the disciplinary committee did not commit any breach of the rules of natural justice and had given sufficient particulars to the plaintiff to defend himself; and (ii) the plaintiff's request that he wanted a copy of the club captain's letter was refused since the questionnaire provided the exact words of the allegations against the plaintiff as contained in the said letter. As for the second suspension, it was alleged that the plaintiff's suspension was in accordance with s. 11.2(c) of the constitution of the club. The defendant testified that the club was empowered to suspend a member during the pendency of legal proceedings which was commenced by the said member against the club.

Held (allowing plaintiff's claim in part; granting damages in the sum of RM20,000):

(1) A scrutiny of the manner in which the disciplinary committee conducted its proceedings revealed that the plaintiff was given adequate notice of the material allegations in the letter of complaint. The basis of the disciplinary action against the plaintiff was that he had uttered vulgar and abusive words against the club captain. The said words had been reproduced verbatim in the questionnaire that was given to the plaintiff. In the premises, the plaintiff was all along aware of the essential allegation of the club captain that was the basis of the disciplinary proceedings against him. Therefore, the plaintiff was not deprived of natural justice. Equally, the defendant had not breached the principles of natural justice in respect of the first suspension. (para 19)

(2) There was no reason to interfere with the finding of facts by the disciplinary committee that the plaintiff had uttered vulgar words against the club captain. The plaintiff had fair notice of the charge against him and was given reasonable opportunity of being heard. The finding of fact was entirely within the purview of the disciplinary committee. In any event, the plaintiff never denied that he uttered the vulgar words in question by answering the questionnaire that was given to him. As such, the legal challenge in relation to the first suspension was without merit. (para 19)

(3) A club's constitution is an agreement between the members and the club. A plain reading of s. 11.2(c) of the constitution of the club showed that it was designed to arbitrarily punish members who approached the courts for relief by suspending them indefinitely. It sought to prevent its members, under pain of indefinite suspension, from approaching the courts. This would mean that no member would be at liberty to sue the club, even in cases where the club management had flouted most fundamental rules of natural justice. Section 29 of the CA50 is imperative and applies to every agreement. That should include the constitution of a social club. Section 11.2(c) of the constitution contravened s. 29 of the CA50 and was therefore not valid. As such, the indefinite suspension of the plaintiff under s. 11.2(c) was unlawful. (paras 21, 23 & 24)

(4) A claim in defamation cannot be supported by the pleadings of the plaintiff. This is because the plaintiff had neglected to comply with O. 78 rr. 2 and 3 of the Rules of Court 2012. The importance of the actual words uttered in the pleadings has always been a recurrent reminder, since in a libel, the words used are the material facts and must therefore be set out in the statement of claim. It was not good to merely describe their substance, purpose or effect. On the facts, the words in the suspension notices that were deemed defamatory were not produced in the statement of claim. As such, the claim in libel was bad. Further, it was not disputed that the plaintiff was suspended by the defendant. It is trite law that what is truly stated cannot be defamatory. Therefore, the claim for defamation could not be sustained (*Lim Kit Siang v. Datuk Dr Ling Liong Sik & Ors*; refd). (paras 25 & 26)

Case(s) referred to:

American International Assurance Company Ltd v. Koh Yen Bee [2002] 4 CLJ 49 CA ***(refd)***

B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS 14 PC ***(dist)***

Dancom Telecommunication (M) Sdn Bhd v. Uniasia General Insurance Bhd [2008] 5 CLJ 551 CA ***(refd)***

Darshan Singh v. Farid Kamal Hussain [2004] 4 CLJ 410 CA ***(refd)***

Darshan Singh v. Farid Kamal Hussain [1997] 2 CLJ Supp 309 HC ***(refd)***

Datuk Pasamanickam & Anor v. Agnes Joseph and R Narayan Samy v. Agnes Joseph [1980] 1 LNS 15 FC ***(refd)***

Florence Bailes v. Dr Ng Jit Leong [1981] 1 LNS 172 ***(refd)***

John Abraham v. The Law Society of Singapore [1991] 2 CLJ 1436; [1991] 4 CLJ (Rep) 887 HC ***(dist)***

Lee v. Showmen's Guild of Great Britain [1952] 1 All ER 1175 ***(refd)***

Leong Sang v. Dato' Chu Ah Nge, Presiden Kelab Diraja Selangor [2011] 2 CLJ 923 HC ***(refd)***

Lim Kit Siang v. Datuk Dr Ling Liong Sik & Ors [1996] 1 LNS 106 HC ***(refd)***

MBf Insurans Sdn Bhd v. Lembaga Penyatuan Dan Pemulihan Tanah Persekutuan (Felcra) [2007] 6 CLJ 639 CA ***(refd)***

Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA ***(dist)***
Raja Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors [2005] 6 CLJ 443 HC ***(refd)***
Rohana Ariffin v. Universiti Sains Malaysia & Another Case [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 HC ***(dist)***

Legislation referred to:
Contracts Act 1950, s. 29
Rules of Court 2012, O. 78 rr. 2, 3
Societies Act 1966, ss. 9(c), 11(2)

For the plaintiff - Sugumar Balakrishnan; M/s Sugumar & Co
For the defendant - Leonard Foo (Jeremy Wong with him); M/s Foo, Teo & Assocs

Reported by Kumitha Abd Majid

JUDGMENT

Ravinthran Paramaguru J:

Introduction

[1] The plaintiff is a member of Kelab Golf Labuan (the club). The defendant is the secretary of the club. She is sued in her capacity as the public officer of the club under s. 9(c) of the Societies Act 1966. The grievance that the plaintiff wants redressed in this suit is his suspension from the club on two occasions. The first occasion was when he allegedly uttered derogatory remarks against the club captain. He was suspended for one month. The second occasion was when he commenced legal action against the club in contravention of the constitution of the club. The plaintiff testified on his own behalf. The defendant testified on her behalf and called two other witnesses.

Case For Plaintiff

[2] The plaintiff has been a member of the club since 1 August 1989. On 7 June 2011, he received a letter from the Disciplinary Committee of the club. The letter stated that the club captain, one Mr Ranjeet Singh had complained about him. The complaint of the club captain was made in a letter. The plaintiff was alleged to have uttered vulgar and derogatory remarks against the club captain. The plaintiff was asked to submit a letter of explanation within 14 days of the said letter. On 18 June 2011, the plaintiff replied by way of a letter. However, the plaintiff was asked to appear before the disciplinary committee on 4 November 2011. The plaintiff was given a questionnaire that contained the crucial allegations of the club captain. However, he was not given the letter of complaint of the club captain. The plaintiff did not answer the questions put to him in the questionnaire because he was not given the letter of the club captain. The plaintiff's request for a copy of the letter of the club captain was denied by

A Teo Kong (DW1) who was the chairman of the disciplinary committee. The plaintiff again received another letter from the club on 8 December 2011. He replied to the said letter. Apparently his explanations were in vain for he was suspended by the club for a period of one month from 27 January 2012 to 26 February 2012 for misbehaviour within the meaning of s. 11(2) B of the constitution of the club. The parties have referred to this suspension as the first suspension. The decision to suspend him was conveyed in a letter dated 20 January 2012 by the club secretary. The plaintiff's main complaint is that the refusal of the disciplinary committee to furnish him the letter of the club captain deprived him of natural justice. His complaint C is well encapsulated in the following paragraph of his witness statement:

> Q27 : Do you wish to say anything further?
>
> A : I say that Kelab Golf Labuan's failure or refusal to furnish a copy of the letter of complaint by Mr. Ranjeet Singh dated 02.05.2011 amounted to me being kept in the dark as to the D evidence against me and in the circumstances, I was denied the right to know the contents thereof and I was thereby denied a real and effective opportunity to meet the case against me and to defend myself resulting in myself being thereby prejudiced.

[3] The plaintiff also said that the suspension notices was published E on the notice board of the club. As a result the plaintiff's reputation was damaged and he suffered anxiety, distress and embarrassment. The plaintiff initially sued the club in the Sessions Court at Labuan through Summons No. LBN 53-07/3 of 2012. He discontinued the suit in the Sessions Court on 11 July 2012. However, the Club again suspended him F on 9 July 2012 for suing the club. This suspension is referred to as the Second Suspension by the parties. He averred that his suspension had breached art. 8 of the Federal Constitution and s. 29 of the Contracts Act 1950 (Revised 1974). During cross-examination, the plaintiff denied uttering the offensive and vulgar words that were reproduced in the questionnaire. He said the club captain was not present at that time. However, the plaintiff G said that he had already apologised to Suhaimi Abd Hamid and J Herman Tunjjin who were present that time.

Case For The Defendant

[4] In respect of the First Suspension, the defendant's case is that the H disciplinary committee did not commit any breach of the rules of natural justice and had given sufficient particulars to the plaintiff to defend himself. The club had made the plaintiff aware of the specific allegations against him when they asked him to respond. Furthermore, the club carried out a fair investigation and did not rely solely on the letter of complaint written by I the club captain. In respect of the Second Suspension, the defence is that it was in accordance with the s. 11.2(c) of the constitution of the club. Three witnesses testified for the defendant.

[5] The first witness was Teo Kong. He was a member of the disciplinary committee that investigated the written complaint of the club captain. The plaintiff was alleged by the club captain to have uttered vulgar and indecent words at the clubhouse on 30 April 2011. Teo Kong said that the plaintiff replied by letter dated 18 June 2011. In the said letter, the plaintiff admitted using vulgar words and expressed a desire to tender an apology. The disciplinary committee also gave a questionnaire to two club members, namely Suhaimi Abd Hamid and J Herman Tunjjin who were present during the said incident. Based on the evidence from the said two members and the letter of the plaintiff dated 18 June 2011, the disciplinary committee recommended suspension. However, the general committee of the club instructed the disciplinary committee to call the plaintiff for an oral hearing. During the oral hearing, the disciplinary committee handed a questionnaire to the plaintiff. In the questionnaire, the plaintiff was asked whether he uttered the vulgar words in question and whether he still insisted that the club captain was not present at that time. However, the plaintiff did not answer the questionnaire and insisted on being given a copy of the complaint letter by the club captain. The disciplinary committee however refused the request because the words alleged to have been uttered by the plaintiff were reproduced in the questionnaire. Teo Kong explained the refusal of the disciplinary committee to give a copy of the complaint letter as follows:

Q : Did you give him a copy of that letter as requested?

A : I did not because I told him that the question had quoted verbatim the exact words of the allegation against him as contained in the letter of Mr. Ranjeet Singh. When he insisted, I informed him that the Disciplinary Committee would refer his request back to the General Committee for a decision.

Q : Did the Disciplinary Committee in fact refer the Plaintiff's request to the General Committee?

A : Yes, we did but the General Committee decided that it was not necessary to provide the Plaintiff with a copy of the letter as the questionnaire had spelt out clearly the allegations made by Mr Ranjeet Singh against the Plaintiff.

Q : Was it also the opinion of the Disciplinary Committee that the words of the questionnaire had adequately and clearly spelt out the allegations against the Plaintiff?

A : Yes, because the vulgar and indecent words complained of in Mr Manjeet Singh's letter were quoted verbatim in the questionnaire and the Plaintiff knew exactly what had been alleged of him.

[6] The secretary of the club and Teo Kong in his capacity as the acting chairman of disciplinary committee then signed a letter informing the plaintiff of the refusal of the general committee to supply him the letter of

A complaint of the club captain. The plaintiff was given another opportunity to reply in writing or to request to be heard in person. However, the plaintiff still refused to respond to the allegations against him as he wanted a copy of the letter of complaint. The disciplinary committee then recommended the suspension of the plaintiff based on the evidence of the B two witnesses and the response of the plaintiff. During cross-examination, Teo Kong maintained that it was not necessary to furnish the letter of complaint to the plaintiff. During re-examination, he further explained that the questionnaire given to the plaintiff is a "cut and paste" of the allegations made by the club captain. He said as follows:

C Q : You told the Court just now that the Plaintiff has a right to know what the allegation is against him and yet the disciplinary committee decided not to give him that letter despite his request. Can you explain why they were so?

A : When he was present at the disciplinary committee, I told him D that the first questionnaire that contained the vulgar words is actually a cut and paste from Mr Ranjeet Singh's letter, I don't know what is the term and he just need to confirm whether that is what he say yes or no in the question and answer. And if he has any remarks he can put it in.

E **[7]** The second witness for the defendant was Chua Lai Thiam. He was the secretary of the club between 24 May 2011 and March 2012. He corroborated the evidence of Teo Kong. He said the plaintiff wanted a copy of the letter of complaint and refused to answer the questionnaire given to him by the disciplinary committee. Chua Lai Thiam agreed that the notices of suspension were posted on the club notice board. However, he denied F that it was libellous as it merely notified the members of the suspension of the plaintiff.

[8] The third witness was the defendant. She was the secretary of the club from 27 March 2012 to 30 March 2013. She confirmed signing the Second Suspension letter dated 9 July 2012. She said that the amendment to the G constitution of the club that empowered the suspension of membership during the pendency of legal proceedings was approved by the Registrar of Societies. She explained the reason for the amendment to the constitution of the club as follows:

H Q : Could you comment on the notation under section 2(c) of the constitution of Kelab Golf Labuan which reads:

Amendment Approved By R.O.S on 24.04.2003 Ref: PPP/SB.808/71(30)

A : In the past Kelab Golf Labuan had faced problems in taking I disciplinary action against members for misconduct. In particular, when members were suspended under section 11.2 some of them

commenced legal proceedings against the club. In one of the general meetings of the club, members resolved to amend the constitution by the inclusion of Section 11.2b and 11.2c which were subsequently approved by the Registrar of Societies on 24.04.2003.

[9] In respect of the first suspension, she disagreed that the refusal of the club to furnish the letter of complaint to the plaintiff resulted in unfairness. However, she agreed that the disciplinary action taken against the plaintiff was triggered by the letter of complaint of the club captain.

Issues

[10] The plaintiff has pleaded that he was suspended for two separate reasons, ie, for allegedly uttering offensive words against the club captain and for suing the club. In respect of the first suspension, the plaintiff alleged that he was denied natural justice in that the letter of complaint of the club captain was not made available to him to prepare his defence. In respect of the second suspension, he alleged that it was made in breach of the Federal Constitution and the Contracts Act 1950 (Revised 1974) as the relevant clause of the club's constitution under which he was suspended sought to prevent him for seeking justice in the courts.

Whether Natural Justice Breached?

[11] The defendant agreed that the disciplinary proceeding against the plaintiff was based on the letter of complaint by the club captain. In this letter, the club captain alleged that the plaintiff uttered abusive vulgar words which were directed at him. Two other club members were present that time. The said letter was tendered at the trial and I shall reproduce the relevant part of it below:

Complaint Against Mr Edward Poh On Unruly Remarks

1. Reference above Sir, I wish to make a complaint against Mr. Edward Poh (Membership No: P-023) on his unruly behaviour and insinuating remarks against the General Committee of LGC. This incident happened on 30th April 2011, just after 1st day of the LGC Championship. The situation was as follows:

   I happened to walk to the table whereby En Suhaimi, Mr. J Herman Tungin and Mr. Edward Poh was seated, which on the outer part of the club house restaurant; I was just about to sit and join them when suddenly, Mr. Edward Poh uttered these words or such words to this effect loudly, "F*** YOU CAPTAIN AND F*** YOU EX-GOLF SECRETARY FOR NOT GIVING ME THE CHANCE TO TEE OFF FROM THE TEE BOX 1 DURING ANY TOURNAMENT SINCE THE LAST 3 YEARS. YOU AND YOUR CRONIES ALWAYS FIX YOUR OWN FLIGHT AND ALWAYS WIN PRIZES DURING TOURNAMENTS".

A

5. ... We cannot condone such behaviour and allegation by allowing this incident to be swept under the carpet or it will only encourage other members to desecrate the image of LGC and its General Committee.

6. Your required consideration and action is sincerely and gratefully appreciated.

B

Thank You.

Sincerely,

(sgd)

Ranjeet Singh

C

Club Captain

[12] In support of the argument that a copy of the above letter should have been given to the plaintiff, counsel for the plaintiff cited a number of well known administrative law cases. They are *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14; [1962] MLJ 169, *Rohana Ariffin & Anor v. Universiti Sains Malaysia* [1988] 2 CLJ (Rep) 390; [1989] 1 MLJ 487, *John Abraham v. The Law Society of Singapore* [1991] 4 CLJ (Rep) 887; [1991] 3 MLJ 359 and Raja Abdul *Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619; [1995] 1 MLJ 308. In the oft-cited case of *B Surinder Singh Kanda v. The Government of the Federation of Malaya*, the Lord Denning said as follows:

D

E

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn LC in *Board of Education v. Rice* [1911] AC 179 at p 182; 27 TLR 378 (HL) down to the decision of their Lordships' Board in *Ceylon University v. Fernando* [1960] 1 WLR 223; [1960] 1 All ER 631 (PC).

F

G

[13] As stated earlier, the defendant has conceded that the letter of complaint of the golf captain was not given to the plaintiff when disciplinary action was taken against him. However, the defence is two-fold, namely that the essential contents of the letter have been disclosed to the plaintiff in the questionnaire that was forwarded to him and that the approach of the courts in social club cases is different from cases involving public bodies. Some of the authorities submitted by counsel for the defendant in respect of the latter defence are: *Florence Bailes v. Dr Ng Jit Leong* [1981] 1 LNS 172; [1982] 1 MLJ 333, *Lee v. Showmen's Guild of Great Britain* [1952] 1 All ER 1175, *American International Assurance Company Ltd v. Koh Yen Bee* [2002] 4 CLJ 49, *Raja Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors* [2005] 6 CLJ 443 and *Leong Sang v. Dato' Chu Ah Nge, Presiden Kelab Diraja Selangor* [2011] 2 CLJ 923. In *Florence Bailes v. Dr Ng Jit Leong (supra)*, Arulanandom J said as follows:

H

I

A careful study of the situation when the courts have interfered with the decisions of managing bodies establish that the courts would only interfere if such decisions affect the right of an individual to work and earn his livelihood or when an individual's right to property has been affected. The courts have been loath to interfere in the affairs of purely social clubs as they have held the relationship there to be of such a personal and intimate nature that the management should be allowed to administer the club without interference from the courts.

[14] In *Lee v. Showmen's Guild of Great Britain (supra)*, Lord Denning LJ said as follows:

The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club, and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter anymore than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observes the procedure laid down by the rules, but will not otherwise interfere.

[15] In *American International Assurance Company Ltd v. Koh Yen Bee (supra)* which concerned the termination of an agency contract by a principal, Abdul Hamid Mohamad JCA said as follows:

In the present case, the cause of action is purely on a private contract. The issue is whether cl. 26(b) is valid, under the law of contract. Other principles like natural justice, which is applicable to public bodies, should not be applied to a purely contractual relationship. Judges, who, by the nature of their job, always have natural justice in their minds, should be slow to extend such principles to the world of business. Business management should not be equated with administration of justice. Business, indeed the country's economy might grind to a halt if companies are expected to be run like a court of law.

[16] A reading of the other cases cited by counsel for the defendant shows that the courts do not strictly and inflexibly apply natural justice principles in social club cases. However, it would not be true to say that natural justice principles can be thrown to the wind by social clubs to deprive its members of their rights and privileges in an arbitrary manner. In fact, in *Florence Bailes v. Dr Ng Jit Leong (supra)*, Arulanandom J prefaced what he said in the earlier cited passage with the following statement:

A It has generally been held that although the rules of an unincorporated body may appear to give the managing body absolute and unfettered powers of expulsion or suspension of members from that body, the courts would still under certain conditions interfere with the arbitrary exercise of such powers.

B **[17]** In *Lee v. Showmen's Guild of Great Britain (supra)*, Lord Denning LJ also recognised the power of the court to intervene in decisions of social clubs. He said as follows:

> But Fletcher Moulton LJ, denied that there was any such limitation on the power of the courts: see *Osborne v. Amalgamated*
C *Society of Railway Servants* ([1911] 1 Ch 562); and it has now become quite clear that he was right: see *Abbott v. Sullivan*. *Abbott*'s case shows that the power of this court to intervene is founded on its jurisdiction to protect rights of contract. If a member is expelled by a committee in breach of contract, this court will grant a declaration that their action is ultra vires.

D **[18]** In the case of *Darshan Singh v. Farid Kamal Hussain* [2004] 4 CLJ 410, the Court of Appeal in reversing the High Court decision (*Darshan Singh v. Farid Kamal Hussain* [1997] 2 CLJ Supp 309) that was cited by counsel for the defendant said that the principles of natural justice applies to social clubs. The Court of Appeal said as follows:

E

> The issues raised by the appellant concern the application of the rules of natural justice requiring impartial adjudicators and fair hearing to domestic inquiry involving members of club, trade union or professional body. It is common ground that the respondent in the present case is a social club and it is governed by its own constitution and the Rules of
F the club. It is not in dispute that the rules of natural justice does apply to a club like the respondent, therefore, members of the club could not arbitrarily be expelled or suspended without first being given a hearing, for their contracts of membership are held to include a duty to act fairly; by accepting them as members and receiving their subscription the club impliedly undertakes to treat them justly and in accordance with rules.

G **[19]** Therefore, if incriminating material that was not made available to the plaintiff had been taken into account by the disciplinary committee, it cannot be said that the plaintiff was accorded a fair hearing (see *B Surinder Singh Kanda v. The Government of the Federation of Malaya (supra)*. However, on the facts of the instant case, I am satisfied that there was no
H breach of the principles of natural justice in respect of the first suspension. My reasons are as follows. The main complaint is that the plaintiff was not given the letter of the club captain and that therefore he was not deprived of the opportunity of preparing his defence at the disciplinary hearing. However, a scrutiny of the manner that the disciplinary committee
I conducted its proceedings reveals that the plaintiff was given adequate notice

of the material allegations in the letter of complaint. The plaintiff was subjected to disciplinary action because he had uttered vulgar and offensive words about the club captain. The indelicate words, which do not bear repetition here, were reproduced by the club captain in his letter of complaint. The same words were reproduced verbatim by the disciplinary committee in the questionnaire that was sent to the plaintiff at the investigative phase of the disciplinary proceedings. At the trial and in the submissions, the plaintiff and his counsel did not dispute that the offensive words in the letter of complaint were reproduced in the questionnaire that was sent to the plaintiff. The administrative law cases cited by counsel for the plaintiff can all be distinguished on the ground that the tribunals in those cases had taken into account incriminating material that were not supplied to the plaintiff. In this case, the basis of the disciplinary case against the plaintiff was that he had uttered vulgar and abusive words against the club captain. The said words had been reproduced verbatim in the questionnaire that was given to the plaintiff. In the premises, the plaintiff was all along aware of the essential allegation of the club captain that was the basis of the disciplinary proceedings against him. Therefore, it is difficult to find that the plaintiff was deprived of natural justice merely because a copy of the letter of complaint of the club captain was not given to him. I therefore find that the plaintiff has failed to prove that the defendant breached the principles of natural justice in respect of the first suspension. In respect of the finding of the disciplinary committee that the plaintiff had utter vulgar words against the club captain, I see no reason to interfere with this finding of fact. The plaintiff had fair notice of the charge against him and was given a reasonable opportunity of being heard. The finding of fact is entirely within the purview of the disciplinary committee. In any event, the salient fact that must be noted is that the plaintiff never denied uttering the vulgar words in question by answering the questionnaire that was given to him. The legal challenge to the first suspension is therefore without merit.

Second Suspension

[20] The plaintiff was suspended from the club again on 9 July 2012 for suing the club in the Sessions Court in respect of the first suspension. The defendant testified in court that the club was empowered to suspend a member during the pendency of legal proceedings against the club. She explained that the members had amended the club's constitution because in the past the club faced difficulty in taking disciplinary proceedings against members who took resorted to legal action in the courts. Apparently this is the reason why the plaintiff was suspended indefinitely since he filed the Sessions Court Summons against the club. Counsel for the plaintiff submitted that the s. 11.2(c) of the club's constitution contravened art. 8 of the Federal Constitution which provides equal protection of the law to all

A citizens. He also cited s. 29 of the Contracts Act 1950 which invalidates agreements that prevents parties enforcing their rights in courts. Section 29, shorn of illustrations, reads as follows:

> Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal
B proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

[21] The first issue that must be addressed is whether there is an agreement between the parties. A club's constitution is an agreement between the members and the club (see *Datuk Pasamanickam & Anor v. Agnes*
C *Joseph* [1980] 1 LNS 15; [1980] 2 MLJ 92). In the instant case, the agreement in question, ie, the constitution of the Kelab Golf Labuan has been amended to prevent any member from enforcing their rights "by the usual legal proceedings in the ordinary tribunals". "Ordinary tribunals" necessarily mean the ordinary courts of law. In the Court of Appeal case of
D *Dancom Telecommunication (M) Sdn Bhd v. Uniasia General Insurance Bhd* [2008] 5 CLJ 551, Low Hop Bing JCA held as follows:

> In my view, the expression "ordinary tribunals" generally in s. 29 means the ordinary courts of law, as s. 29 does not render illegal any contract by which parties have agreed to refer their dispute to arbitration under
E the exceptions 1 and 2.

[22] Section 11.2(c) which empowered the club to suspend the plaintiff reads as follows:

> 11.2(c). A Member who has been under disciplinary action and has commenced legal proceedings and where such legal proceeding
F are still pending shall have his/her membership suspended from the date of commencement of the legal proceedings or disciplinary action until the final outcome of the said proceedings.

[23] A plain reading of the above provision will lead one to conclude
G that it is designed to arbitrarily punish members who approach the courts for relief by suspending them indefinitely. In other words, it seeks to prevent its members, under pain of indefinite suspension, from approaching the courts. This would mean that no member would be at liberty to sue the club, even in cases where the club management had
H flouted the most fundamental rules of natural justice. In my view, s. 29 is imperative and it applies to "every agreement". That should include the constitution of a social club. In *MBf Insurans Sdn Bhd v. Lembaga Penyatuan Dan Pemulihan Tanah Persekutuan (Felcra)* [2007] 6 CLJ 639, Hasan Lah JCA said as follows at the Court of Appeal:

I > Section 29 of the Contracts Act 1950 with its prohibitive and clear words was an essential provision, an indication of the intent that it was mandatory, any departure of which must be frowned upon.

[24] For all the above reasons, I find that s. 11.2(c) of the constitution of Kelab Golf Labuan contravenes s. 29 of the Contracts Act 1950 (Revised 1974) and is therefore not valid. It follows that the indefinite suspension of the plaintiff under s. 11.2(c) is unlawful.

Libel Claim

[25] The plaintiff testified that his reputation was damaged because the suspension notices were posted on the notice board of the club. However, as pointed out by counsel for the defendant, a claim in defamation cannot be supported by the pleadings of the plaintiff. This is because the plaintiff has neglected to comply with O. 78 rr. 2 and 3 of the Rules of Court 2012. In *Lim Kit Siang v. Datuk Dr Ling Liong Sik & Ors* [1996] 1 LNS 106; [1997] 5 MLJ 523 which was cited by counsel for the defendant, the court said as follows:

> It behoves me to echo the principles as laid down in authorities such as *Harris v. Warre* [1879] 4 CPD 125 and *Workers' Party v. Tay Boon Too* [1975] 1 LNS 193; [1975] 1 MLJ 47 that the importance of the actual words uttered in the pleadings has always been a recurrent reminder, since in a libel, the words used are the material facts and must therefore be set out in the statement of claim. It is not good to merely describe their substance, purpose or effect. The law requires the very words in the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action.

[26] In the instant case, the words of the suspension notices that were deemed defamatory were not reproduced in the statement of claim. On this ground alone, the claim in libel is bad. Furthermore, it is not disputed that the plaintiff was suspended by the defendant. It is trite law that what is truly stated cannot be defamatory. Therefore, the defamation claim cannot be sustained.

[27] In conclusion, the plaintiff has partially succeeded in this action as I find that his Second Suspension is unlawful. I shall grant damages in the sum of RM20,000 with 4% interest from date of judgment until full realisation. I shall also grant costs of RM10,000 in favour of the plaintiff.